Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-651

PETER CACHUR,

Petitioner,

vs.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL 1859,

Respondent,

and

WESTERN ELECTRIC COMPANY, INC.,

Respondent.

BRIEF OF INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL 1859, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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Respondent, International Brotherhood of Electrical Workers, AFL-CIO, Local 1859, respectfully urges that the Petition for Writ of Certiorari filed herein be denied.

OPINIONS BELOW.

The Memorandum Opinion of District Judge Flaum of the United States District Court of the Northern District of Illinois granting summary judgment to Respondents, Western Electric Company, Inc. and International Brotherhood of Electrical Workers, AFL-CIO, Local 859, is reprinted in Appendix 1 of the Petition for Writ of Certiorari. That Opinion is not officially reported.

The unanimous and unpublished Per Curiam Orders and Opinion of a panel of the United States Court of Appeals for the Seventh Circuit affirming and adopting, *inter alia* the Memorandum Opinion of the District Court, as its own, is reprinted in Appendices 2 and 3 of the Petition.

JURISDICTION.

The jurisdiction of this Court is invoked pursuant to 29 U. S. Section 301(a).

QUESTION PRESENTED.

Whether the District Court and Court of Appeals on review erred in granting summary Judgment in favor of Respondents by ruling that Petitioner did not properly withdraw from the Union and that his subsequent discharge by Western Electric Company, Inc. for failure to tender dues was not wrongful.

RESPONDENT'S STATEMENT OF CASE.

This cause of action originates from a Complaint filed on August 30, 1974, by Petitioner, Peter Cachur, alleging a breach of duty of fair representation against Respondent, International Brotherhood of Electrical Workers, AFL-CIO, Local 1859 (Union) and a breach of the Collective Bargaining Agreement by his former Employer, Respondent, Western Electric Company, Inc., (Company). Petitioner claimed that he properly withdrew from Membership in the Union, that the Union refused to recognize his withdrawal and that the Company subsequently discharged him for failure to pay dues to the Union as required by the Collective Bargaining Agreement between the Company and the Union.

Petitioner sent his notices of withdrawal to the Union on February 27, 1967, and July 19, 1969. The escape periods authorized in the Collective Bargaining Agreements from 1963-1971 were ten (10) days after the effective date of the Contract in 1963 and the final ten (10) days of the 1967 Contract, which was subsequently modified to the ten (10) days proceeding July 25, 1971 by the Union Membership. Accordingly, the Petitioner's Notices of Withdrawal were untimely. Petitioner was advised that his attempt to withdraw was ineffective and that he remained a member of the Union with a continuing obligation to pay dues. Petitioner refused to pay his dues and pursuant to the Union's Security Provisions of the Collective Bargaining Agreement, he was terminated.

After dismissal of his original Complaint by the District Court, the Petitioner filed an Amended Complaint which both the Company and the Union moved the Court to dismiss. Subsequently, on May 15, 1975, the Court dismissed certain portions of the Amended Complaint. In this ruling, the Court

indicated that subsequent to completion of discovery, at which time the issues would be more precise, the Respondents could file their appropriate Motions. The Court stated:

> "The Court also concludes that the NLRB's Resolution of Petitioner's unfair labor practices against the Western Electric Company is not a basis at this time for dismissing Count II. The conspiracy allegations of the Complaint were not before the Board. Once the issues are more precisely defined, the effect of this NLRB action can be determined".

On June 9, 1975, the Company filed its Answer to the Petitioner's Amended Complaint. Following disposition of other Motions, all parties commenced discovery in an effort to find the precise issues of the case. By Order of the Court, discovery was closed on July 2, 1976.

Subsequently, based upon the District Court's earlier Memorandum Opinion and evidence produced in discovery, the Respondent Company, filed a Motion for Summary Judgment in which the Respondent Union, joined pursuant to leave of Court.

On January 27, 1977, Judge Joel M. Flaum, issued his Memorandum Opinion, entering Summary Judgment for both Respondents:

> "The Court hereby enters Summary Judgment for Defendants based on the undisputed facts that Plaintiff did not successfully withdraw from the Union and that his discharge, on the basis of failure to pay dues, was not a wrongful discharge. The conclusionary allegations of conspiracy between the Defendants are utterly without factual basis in the discovery of the lawsuit and it does not preclude the entry of such a Judgment for the Defendant's as Plaintiff's claim for wrongful discharge was the foundation of the *Vaca* v. *Sipes* and Section 301 claims '. . . summary judgment is hereby entered for the defendant . . .' because on the undisputed facts of this action the Defendants are entitled to judgment as a matter of law."

On February 18, 1977, Plaintiff filed his Notice to Appeal seeking to overturn the District Court's issuance of Summary Judgment; the same being denied on May 9, 1978. Subsequently, on June 22, 1978, the Petitioner filed for reconsideration which was also denied and a mandate was issued on June 27, 1978.

ARGUMENT.

I.

THE COURT OF APPEALS AFFIRMATION OF THE DISTRICT COURT'S ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF THE COMPANY AND UNION WAS PROPER AND NOT A DENIAL OF EQUAL PROTECTION SINCE THERE WERE NO GENUINE ISSUES OF MATERIAL FACT REMAINING FOR TRIAL.

In his Petition for Writ of Certiorari, the Petitioner, Peter Cachur, attempts to reallege and reargue all that was previously argued in the District Court and Court of Appeals. Petitioner demonstrates a fundamental misunderstanding of Summary Judgment proceedings under Rule 56 of the Federal Rules of Civil Procedure. Rule 56(c) provides in relevant part as follows:

> "The judgment sought shall be rendered forthwith if the pleadings, depositions, Answers to Interrogatories and admissions on file, together with the Affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Therefore, the important elements of said Motion is to have no *genuine issues* as to *material facts.*

There were no genuine issues of material fact remaining for trial after the examination of the Respondent's Motion for Summary Judgment. It would appear that the Petitioner's main problem is his attempt to portray the facts of this instant case not only in his original Complaint, his Memorandum in Opposition to Summary Judgment, and his Appellate Brief, but also in his within Petition for Writ of Certiorari as the way he wants the facts to be as opposed to the way the situation truly existed. The Petitioner has attempted to obscure the main issue by his

references to an alleged conspiracy against him and against the entire membership of the Union.

The Petitioner continually attempts to skirt the issue of whether or not his letter of February 27, 1967, withdrawing from the Union was properly mailed within the given escape period.

It is obvious that the Court truly recognized the facts that were material and genuine to issues since the Court in its Memorandum of Opinion granting Summary Judgment truly sets out not only the dates during which the Petitioner attempted to withdraw from the Union but also the true escape periods contained in the Collective Bargaining Contract. See *Memorandum of Opinion,* Appendix A 1 of Petitioner's Petition for Writ of Certiorari.

The Court held, in fact, that no genuine material issue of fact remained and entered Summary Judgment in favor of Respondents. It is not worthy that the Petitioner at no time, either in his original Complaint, his Appellate Brief, or the within Petition for Writ of Certiorari provides any factual indication whatsoever that would provide any foundation for the alleged conspiracy between the Union and the Company.

The only purpose that would be served by conducting a trial in this cause would simply be a repetition of Petitioner's conclusionary allegations set forth in his Amended Complaint. The sole issue in this case turns upon the interpretation of the parties Collective Bargaining Agreement which is clearly a question of law and not a question of fact. As noted by the District Court and Appellate Court, no genuine material issues as to facts remained after discovery. The Petitioner's reference in his Petition for Writ of Certiorari to buy the alleged issues of fact which are indeed questions of law, did not preclude the issuance of Summary Judgment. It is, therefore, submitted that the District Court's entry of Summary Judgment in favor of the Respondent was properly affirmed by the Appellate Court since there were no genuine issues of material fact remaining for trial. The resolution of the legal issues decided by the District Court were not challenged by the Petitioner in his Appeal.

II.

PETITIONER WAS NOT DEPRIVED OF EQUAL PROTECTION OF 29 U. S. C., SECTION 411 101(a)5 WHEN THE DISTRICT COURT GRANTED SUMMARY JUDGMENT ON BEHALF OF RESPONDENTS SINCE THE SAME WAS NOT APPLICABLE.

The Petitioner attempts for the first time in his Petition for a Writ of Certiorari to interject that he was denied equal protection pursuant to 29 U. S. 411 by the District Court's granting of Summary Judgment. This position is improper and totally without foundation. 29 U. S. C. 411 Section 101(a)5 states:

> "Safeguards against improper disciplinary action—no member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for non-payment of dues by such organization or by any officer thereof unless such member has been: (a) served with written specific charges, (b) given a reasonable time to prepare his defense, (c) afforded a full and fair hearing."

The section of the statute cited by the Petitioner in his Petition for Writ of Certiorari clearly sets forth that a member of a labor organization may be suspended, expelled, or otherwise disciplined for non-payment of dues without a requirement of the serving of written specific charges, a reasonable time to prepare a defense and equal and fair hearing.

Petitioner now is far afield from the original allegations of his Complaint. It would appear at this stage that he is now arguing that he was never a member of the Union and, therefore, was wrongfully discharged. Previously, the Petition had argued that he was a member of the Union and was wrongfully discharged. It is now apparent that the Petitioner is grasping for straws which just do not exist in order to maintain a cause of action against the Respondents.

There were no findings in either the NLRB Decision or the decision of the lower Courts which would either remotely indicate that the Petitioner was never a member of the Respondent Union. On the contrary, findings in evidence indicated that the Petitioner was a member of the Union not only once but twice. Petitioner failed to withdraw from the Respondent Union in accord with the provisions of the Union Agreement and was subsequently discharged. The Petitioner, thereafter, was reinstated with full seniority benefits in the Union and again attempted to withdraw wrongfully with the same results.

Petitioner was given ample time to set forth the cause of action to be granted. In failing to do so, the District Court was without any recourse other than to grant the Respondent's Joint Motion for Summary Judgment. For all those reasons set forth in the Respondent's respective Motion for Summary Judgment, Replies, and Appellate Briefs, the District Court's granting of Summary Judgment was proper.

At no time in the lower court or Appellate Court had Petitioner brought forth his present argument of denial of equal protection. It would, therefore, appear to be inappropriate to allow such an allegation in a Petition for Writ of Certiorari. For this reason alone Argument B of Petitioner's Petition for Writ of Certiorari should be denied.

CONCLUSION.

Accordingly for the reasons set forth in Judge Flaum's Memorandum Opinion granting Respondent's Summary Judgment along with the Opinion of the Appellate Court filed May 9, 1978, Summary Judgment on behalf of both Respondents was proper. It is, therefore, submitted by the Respondent, International Brotherhood of Electrical Workers, AFL-CIO, Local 1859, that the Petitioner's Peter Cachur, Petition for Writ of Certiorari to the United States Court of Appeals, for the Seventh Circuit should be denied.

Respectfully submitted,

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